IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10845 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMIRAT TEXTILE PROCESSOR

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 10845 of 2004

MR DIPAK R DAVE for Petitioner No. 1

MR NIRAL R MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 08/10/2004

ORAL JUDGEMENT

1. Rule. Mr.Niral Mehta, learned advocate for respondent No.1 waives service of rule.

2. M/s.Amirat Textile Processor is before this Court, being aggrieved of an order dated 30th June 2003,

passed under Section 7A of the Employees' Provident Funds & Misc. Provisions Act, 1952 ("Act" for short), order dated 31.12.2003 , passed under Section 7A of the Act and order dated 27.07.2004, passed under Section 7B of the Act. The case of the petitioner is that, on account of the grounds mentioned in the petition, which were also placed before the authority in the form of Review Application, the petitioner establishment could not respond to the notice issued by the respondent Assistant Provident Fund Commissioner. Later on, documentary evidence was produced before the authority, but then, it is not taken into consideration, in a satisfactory manner. Hence, this petition is filed before this Court.

3. Mr.Niral Mehta, learned advocate for the respondent authority invited the attention of the Court to the various paragraphs of the affidavit in reply, affirmed by Shri Mahendra Hariprasad Shukla, Assistant Provident Fund Commissioner, to point out that, sufficient opportunities were given to the petitioner. Despite that, petitioner did not remain present and hence, the authority was left with no option, except to conclude the enquiry, exparte, on the basis of the material available with it. The learned advocate also pointed out that, the 'Review Application', filed by the petitioner, was not considered, as the same was not affirmed in proper formate. In light of the fact that, many opportunities were given to the petitioner and that, notices and summons were duly served to the petitioner, the authority has rightly passed the order under challenge.

4. The authority may be right in its action of passing order/s under challenge. However, the question, which arises for consideration is that, the necessary 'documentary evidence' like Challans and other similar documents ought to have been taken into consideration before passing the orders under challenge. The order/s are, therefore, required to be varied in light of these documents. More so, when the petitioner has made the deposit as directed by this Court, by order dated 3rd September 2004. In the considered opinion of this Court, if the request of the petitioner is granted, no prejudice will be caused to the respondent, because ultimately, the authority has to pass an order after taking into consideration all the relevant documents. In view of that, following order is passed:

5. The order in question, i.e. order dated 30th June 2003, 31st December 2003 and 27th July 2004 are hereby quashed and set aside. The respondent authority

is directed to consider the case of the petitioner afresh, after giving him an opportunity of producing all relevant material/documents and pass fresh order.

The deposit made by the petitioner shall be given credit towards the amount, which may be ordered by the authority. Taking into consideration the fact that, the petitioner was, though served, did not remain present before the authority, the petitioner shall pay Rs.5,000/(Rupees Five Thousand Only) towards cost, to the respondent authority. Rule is made absolute to the aforesaid extent only.

(Ravi R.Tripathi, J.)

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